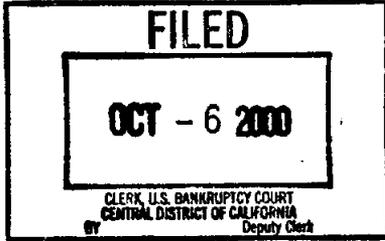


FOR PUBLICATION



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re)
)
Association of Volleyball)
Professionals,)
)
Debtor;)
_____)
)
AVP Properties, Inc.)
)
Debtor;)
)
_____)
)
AVP,)
)
Debtor.)
_____)

Case Nos. LA 98-56632-SB
LA 98-56789-SB
LA 98-56794-SB

[Substantively Consolidated]

Chapter 7

**Amended Opinion on
Service of Claim Objection**

Date: August 8, 2000
Time: 10:00 a.m.
Ctrm: 1575

197

I. INTRODUCTION

1 This claim objection raises the issue of
2 whether AVP,¹ the debtor in these substantively
3 consolidated chapter 11 cases,² has adequately
4 served notice of its objection on creditor Sandsite
5 Merchandising Group [hereinafter SMG]. AVP
6 served the objection by mailing it to SMG at its last
7 known address, as stated in its proof of claim.
8 However, AVP has not served SMG by any
9 method of service that complies with the
10 requirements of Rule 7004. The court finds that
11 the objection cannot be sustained until the
12 requirements of Rule 7004 are met.

II. FACTS

9 SMG filed a \$5816.20 priority claim for the
10 unpaid half of the purchase price for 576 fixed
11 waist boardshorts plus interest. AVP made this
12 purchase on April 22, 1997 at a unit price of
13 \$16.90 and paid half of the purchase price in
14 advance. SMG's proof of claim states that it is
15 entitled to priority on the following grounds: "small
16 business, minority owned female." AVP concedes
17 the legitimacy of SMG's claim, but contends that it
18 is allowable only as a general unsecured claim
19 without priority.

20 The signature on the proof of claim is
21 hardly legible. However, the proof of claim
22 includes two memos from Dina de Meo, which is
23 consistent with the signature. The court concludes
24 that she signed the claim on behalf of SMG.

25 AVP addressed the claim objection to the
26 address given in SMG's proof of claim as follows:

27 Sandsite Merchandising Group
28 2217 Vista Drive
Manhattan Beach, CA 90266

23 ¹Three debtors, AVP, AVP Properties,
24 Inc. and Association of Volleyball Professionals
25 filed separate chapter 11 cases. On prior order
26 of the court, these cases have been
27 substantively consolidated.

28 ²Unless otherwise indicated, all chapter,
section and rule references are to the
Bankruptcy Code, 11 U.S.C. §§ 101-1330 (West
2000) and to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9036.

AVP did not address the objection to the attention
of Ms. de Meo or to any other individual at SMG.
Accordingly, the court continued the hearing to
permit AVP to accomplish service of the claim
objection in compliance with Rule 7004.

For the continued hearing AVP filed a
declaration by one of its lawyers, which stated that
he had called the telephone number listed on
SMG's proof of claim and was informed that he
had called the wrong number. The next day he
called the same number, asked for Ms. de Meo,
and was informed that she no longer lived at that
number and that she had left no forwarding
number. Thereafter, AVP searched the corporate
records of each of the fifty states, but did not find
a listing for SMG. Similarly, AVP searched
through the "dba" records of each of the fifty states
with the same results. Based on this record, AVP
asks this court to find that the mailing of the
objection to nobody in particular (not even Ms. de
Meo) is sufficient service of the objection on SMG.

III. Discussion

Plaintiff has not shown the legal status of
SMG. The court assumes without deciding that it
is a corporation. Plaintiff has the burden of
showing that service of a claim objection is
appropriate for the status of the defendant. See
Gottlieb v. Sandia Am. Corp., 452 F.2d 510, 513-
14 (3^d Cir. 1971).

A. Proof of Claim

A proof of claim is a written statement
setting forth the creditor's claim against a
bankruptcy estate. See Rule 3001(a). A proof of
claim is required to conform substantially to Official
Form 10. See *id.* A proof of claim executed and
filed in accordance with the bankruptcy rules
constitutes prima facie evidence of the validity and
amount of the claim. See Rule 3001(f).

By filing a proof of claim, the creditor
submits itself to the equitable jurisdiction of the
bankruptcy court. See, e.g., *Langenkamp v. Culp*,
498 U.S. 42, 44-45, 111 S.Ct. 330, 331-32, 112
L.Ed.2d 343 (1990). Thus a proof of claim confers
on the bankruptcy court both personal jurisdiction
over the claimant and subject matter jurisdiction
over the claim. See, e.g., *Tucker Plastics, Inc. v.*
Pay 'N Pak Store, Inc. (In re PNP Holdings Corp.),
99 F.3d 910, 911 (9th Cir. 1996).

B. Claim Objection

1 A claim objection initiates a contested
2 matter that is governed by Rule 9014.³ *United*
3 *States v. Levoy (In re Levoy)*, 182 B.R. 827, 834
4 (9th Cir. BAP 1995). Rule 9014, in turn, requires
5 that, as a contested matter, a claim objection be
6 served pursuant to the requirements of Rule 7004.
7 *See id.*; *Boykin v. Marriott Int'l, Inc. (In re Boykin)*,
8 246 B.R. 825, 827 (Bankr. E.D. Va. 2000); *In re*
9 *Morrell*, 69 B.R. 147, 149-50 (Bankr. N.D. Cal.
10 1986).

11 There is no particular time frame in which
12 an objection to claim must be filed. *See First*
13 *Union Commercial Corp. v. Nelson, Mullins, Riley*
14 *& Scarborough (In re Varat Enter.)*, 81 F.3d 1310,
15 1318 (4th Cir. 1996). However, a chapter 11 plan
16 disposes of any issue respecting the validity of a
17 claim, except for claims specifically identified in the
18 plan. *See id.*; *Heritage Hotel Ltd. Partnership I v.*
19 *Valley Bank (In re Heritage Hotel Partnership I)*,
20 160 B.R. 374, 378 (9th Cir. BAP 1993). Thus a
21 claim objection may not be made after the plan
22 provides otherwise with respect to that particular
23 claim.⁴ *Varat Enter.*, 81 F.3d at 1318.

14 C. Service of Claim Objection

15
16
17 ³Rule 9014 in pertinent part states:

18 In a contested matter in a case
19 under the Code not otherwise
20 governed by these rules, relief
21 shall be requested by motion,
22 and reasonable notice and
23 opportunity for hearing shall be
24 afforded the party against whom
25 relief is sought. . . . The motion
26 shall be served in the manner
27 provided for service of a
28 summons and complaint by
Rule 7004.

⁴Initially, the confirmed plan in this case
did not reserve jurisdiction for the court to
consider such claims objections. Because
substantial consummation of the plan had not
yet occurred, see 11 U.S.C. § 1127(b) (West
2000), the debtor modified the plan without
opposition to permit its claims objections to be
brought.

The analysis of the procedure for making
a claim objection begins with Rule 3007.⁵ This
rule provides that an objection shall be in writing
and filed with the bankruptcy court, and a copy of
the objection with notice of a hearing "shall be
mailed or otherwise delivered" to the claimant at
least 30 days prior to the hearing. The rule further
provides that, if an objection to a claim is joined
with a demand for relief of the kind specified in
Rule 7001, it becomes an adversary proceeding
governed by Rules 7001-7087.

Rule 7004 provides for service of process
and other papers in bankruptcy cases. In part it
incorporates Rule 4 of the Federal Rules of Civil
Procedure, and in part it provides separate rules
for service in bankruptcy cases. Unlike Rule 4,
Rule 7004 permits service by mail, which AVP
attempted in this case.

Rule 7004 provides three alternative
procedures for serving process on a corporation.
An objection to claim must be served on SMG by
one of these procedures.

1. Service Pursuant to Rule 7004(b)

The principal provision for service of
process on a corporation is Rule 7004(b)(3).⁶ This
rule specifies that service upon a domestic or
foreign corporation is accomplished by (1) mailing
a copy of the summons and complaint (or, in this

17
18
19
20
21
22
23
24
25
26
27
28
⁵Rule 3007 states:

An objection to the allowance of
a claim shall be in writing and
filed. A copy of the objection
with notice of the hearing
thereon shall be mailed or
otherwise delivered to the
claimant, the debtor or debtor in
possession and the trustee at
least 30 days prior to the
hearing. If an objection to a
claim is joined with a demand
for relief of the kind specified in
Rule 7001, it becomes an
adversary proceeding.

⁶Rule 7004(b)(8) may also be relevant.
However, it appears that it adds nothing to the
provisions of subparagraph (b)(3), with respect
to service on a corporation.

1 case, the claim objection) to the attention of an
2 officer, a managing or general agent, or to any
3 other agent authorized by appointment or by law to
4 receive service of process, and (2) if the agent is
5 one authorized by statute to receive service and
6 the statute so requires, by also mailing a copy to
7 the defendant.

8 It is not just any agent who qualifies as a
9 recipient of service on behalf of a corporation.
10 Rule 7004(b)(3) specifies that the agent must be
11 a managing or general agent or an agent
12 specifically designated for such purpose by
13 appointment or by law. *See Reisman v. First New*
14 *York Bank for Bus. (In re Reisman)*, 139 B.R. 797,
15 800 (Bankr. S.D.N.Y.1992); *Rosa v. C.P.P. Corp.*
16 *(In re Legend Indus.)*, 49 B.R. 935, 937 (Bankr.
17 E.D.N.Y.1985); 10 COLLIER ON BANKRUPTCY §
18 7004.02[9] (15th ed. rev. 2000). Service on any
19 other corporate employee is not sufficient. *See*
20 *Gottlieb v. Sandia Am. Corp.*, 452 F.2d 510,
21 513-14 (3d Cir.1971); 1 MOORE'S FEDERAL
22 PRACTICE ¶ 4.53[2][c] (3d ed.1999). Most notably,
23 service not directed to the attention of anybody in
24 particular is not sufficient. The plaintiff bears the
25 burden of proving that the service recipient is a
qualified recipient of service. *Gottlieb*, 452 F.2d at
513-14.

26 There is an important reason for limiting
27 the scope of individuals who qualify as recipients
28 of service of process on behalf of a corporation.
An individual who receives service of process on
behalf of a corporation must be someone who, by
inclination and training or statutory duty, will
assure that the papers are passed on to a
responsible authority in the corporation who has
the responsibility to cause the corporation to
respond appropriately:

The rationale of all rules for
service of process on
corporations is that service must
be made on a representative so
integrated with the corporation
sued as to make it a priori
supposable that he will realize
his responsibilities and know
what he should do with any legal
papers served on him.

Goetz v. Interlake S.S. Co., 47 F.2d 753, 757
(S.D.N.Y. 1931).

Because service of the claim objection
was not made on an officer or qualifying agent of
SMG, the court finds that AVP has not

accomplished service of the objection pursuant to
Rule 7004(b). AVP has shown that it cannot serve
SMG under this rule, because it cannot find an
officer or qualifying agent. Thus service must be
accomplished by a different method.

2. Service Pursuant to Rule 7004(a) and Rule 4

The second method for service under
Rule 7004 is provided in subsection (a), which
incorporates by reference subparagraphs (e)-(j)
(inter alia) of Rule 4 of the Federal Rules of Civil
Procedure. Thus AVP could use these provisions
to serve its claim objection on SMG.

a. Rule 4

Rule 4 of the Federal Rules of Civil
Procedure provides for the service and filing of a
summons and complaint in federal district court.
Subparagraphs (e)-(j) provide the rules for service
upon a party who does not voluntarily appear and
defend.

For a domestic corporation, Rule 4(h)
provides two alternatives for the service of process
on a corporation.⁷ First, Rule 4(h) authorizes
service in the same manner as Rule 7004(b)(3),
discussed *supra*, except that such service must be
by personal delivery, rather than by mail.

Second, Rule 4(h)(1) permits the service
of process on a domestic corporation in the same
manner as service is accomplished on an
individual pursuant to subparagraph (e)(1). Rule
4(e)(1) authorizes service on an individual
pursuant to the law of the state in which the district
court is located or in which service is effected.

Notably, Rule 4 has no direct provision for
service of process by publication. Thus Rule 4
authorizes service on a corporation by publication
only insofar as it is provided for
by state law in the appropriate state. In
consequence, we must turn to California law to
see whether Rules 4 and 7004 authorize service
of the claim objection here at issue by publication.

b. California Law on Service of Process

⁷Rule 4(h) has a restriction on the
method of service on a foreign corporation that
has no counterpart in Rule 7004(b)(3).

i. Service on Corporate Agent

1 The California law for service of process
2 on a corporation is provided in California Code of
3 Civil Procedure [hereinafter CCP] § 416.10, which
4 provides in relevant part:

5 A summons may be served on a
6 corporation by delivering a copy
7 of the summons and of the
8 complaint:

9 (a) to the person designated as
10 agent for service of process . . .

11 (b) to the president or other
12 head of the corporation, a vice
13 president, a secretary or
14 assistant secretary, a treasurer or
15 assistant treasurer, a general
16 manager, or a person authorized
17 by the corporation to receive
18 service of process

19 CCP § 416.10 (West 2000). This provision is
20 similar to (but not identical with) Rule 7004(b)(3),
21 again with the proviso that it requires personal
22 service rather than permitting service by mail.
23 This provision is also unavailing to AVP in this
24 case because of its inability to find a person
25 qualified to receive the claim objection on behalf of
26 SMG.

ii. Service by Publication

27 The inability to find an officer or agent on
28 whom to serve process on behalf of a corporation
is a well-known problem with a traditional solution.
Sending the objection to nobody in particular at the
last known address of the corporation is not the
recognized solution. Service by publication is the
traditional method for service when a party cannot
be served by other means.

California law provides for service of
process by publication. CCP § 415.50(a)
authorizes such service in the following
circumstances:

A summons may be served by
publication if upon affidavit it
appears to the satisfaction of the
court . . . that the party to be
served cannot with reasonable
diligence be served in another
manner specified in this article
and that:

. . .
(2) The party to be served has or
claims an interest in real or
personal property in this state
that is subject to the jurisdiction of
the court or the relief demanded
in the action consists wholly or in
part in excluding the party from
any interest in the property.

CCP § 415.50(a)(West 2000).

By filing its claim in this case as a priority
claim, SMG has claimed an interest in property of
the reorganized debtor in this case that is subject
to the jurisdiction of this court. In addition, AVP
has adequately shown that SMG cannot with
reasonable diligence be served in another manner
provided in Article 3 of Chapter 4 of the CCP [CCP
§§ 415.10-415.47].⁸

CCP §§ 415.50(b)-(c) provide for the
manner of service by publication:

(b) The court shall order the
summons to be published in a
named newspaper, published in
this state, that is most likely to
give actual notice to the party to
be served and direct that a copy
of the summons, the complaint,
and the order for publication be
forthwith mailed to the party if his
or her address is ascertained
before expiration of the time
prescribed for publication of the
summons. Except as otherwise
provided by statute, the
publication shall be made as
provided by Section 6064 of the
Government Code unless the
court, in its discretion, orders
publication for a longer period.

(c) Service of a summons in this
manner is deemed complete as
provided in Section 6064 of the
Government Code.

CCP § 415.50(West 2000). California

⁸CCP §§ 415.10-415.47 provide for
personal service, service by leaving the
summons and complaint at the home or office of
the person being served, and service by mail.

Government Code § 6064 in turn provides:

1 Publication of notice pursuant to
2 this section shall be once a week
3 for four consecutive weeks. Four
4 publications in a newspaper
5 regularly published once a week
6 or oftener, with at least five days
7 intervening between the
8 respective publication dates not
counting such publication dates,
are sufficient. The period of
notice commences with the first
day of publication and terminates
at the end of the twenty-eighth
day

9 CAL. GOV'T CODE § 6064 (West 2000).

10 The court finds that AVP can effect
11 service of the claim objection on SMG by
12 publication pursuant to § 415.50. Such service is
13 provided for by Rule 4(h)(1) of the Federal Rules
of Civil Procedure, through its incorporation by
reference of the California law on service by
publication.

14 3. Service by Publication Under Rule 7004(c)

15 Unlike Rule 4 of the Federal Rules of Civil
16 Procedure, Rule 7004 has its own provision on
17 service of process by publication. Rule 7004(c)
18 permits service by publication if (1) the proceeding
is to determine or to protect rights in property in
the custody of the court, and (2) the party cannot
be served pursuant to Rule 4(e)-(j) of the Federal
Rules of Civil Procedure.

19 An objection to a creditor's claim is a
20 proceeding to determine the rights of the creditor
21 to its proportionate share of the assets of the
22 debtor's estate. These assets are property in the
custody of the court. See *Gardner v. New Jersey*,
329 U.S. 565, 572-73 (1947). Thus AVP satisfies
the first requirement of Rule 7004(c).

23 However, the second condition for
24 invoking Rule 7004(c) is not met in this case.
25 Because AVP can serve SMG by publication
26 under Rule 4(e) and (h) and the California law
incorporated therein by reference, publication
under Rule 7004(c) is not an available method of
service for its claim objection.

27 D. Contrast of Service and Notice

28 Notice in bankruptcy cases is different

from service of process. Confusion between the
two is compounded because both can sometimes
be accomplished in the same manner. Bankruptcy
proceedings often differ significantly from
non-bankruptcy civil litigation. Many actions may
occur in a bankruptcy case that may affect all
creditors generally, but none specifically. Such
matters include notice of filing of a bankruptcy
case, notice of bar dates to file proofs of claim,
notice of hearings on approval of disclosure
statements, notice of proposed use, sale or lease
of property, notice of approval of compromises or
settlements, and notice of deadlines for filing
objections to chapter 11, 12 and 13 plans. These
matters require notice to creditors, which is
generally governed by Rule 2002.⁹

Notices under Rule 2002 are mailed to
creditors at the address designated by the creditor
in a request filed with the court or, if no request
has been filed, to the address shown on the list of
creditors or the schedules, whichever is filed later.

In an asset case, the appropriate address is the
address stated in the proof of claim. See Rule
2002(g). The notice requirements in bankruptcy
are designed to satisfy the due process
requirement of adequate notice to parties whose
interests may be affected in such proceedings.
See generally *Boykin*, 246 B.R. at 828-29.

In contrast, when a bankruptcy
proceeding, such as an objection to a proof of
claim or the sale or use of property free and clear
of a creditor's liens, directly affects the individual
rights of a specific party, the initiating motion or
objection must be served on the affected party in
the same manner as a summons and complaint
are served pursuant to Rule 7004. *Boykin*, 246
B.R. at 829.

The interplay between notice and service
is illustrated by the claims allowance process.
Pursuant to Rule 2002(a)(7), notice is given to all
creditors of the deadline for filing claims. If the
trustee objects to a claim, the objection is a
contested matter under Rule 9014 and must be
served on the particular creditor pursuant to Rule
7004: notice of the objection under Rule 2002 is
not sufficient. If the trustee's objection is resolved
by a compromise, Rule 9019(a) requires a general

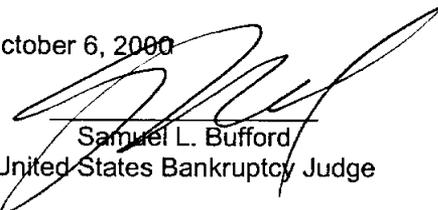
⁹Other rules, such as Rule 4001, provide
additional requirements in particular
circumstances.

1 notice pursuant to Rule 2002(a)(3) to all creditors
2 of the proposed compromise. An objection to the
3 settlement is a contested matter that again
4 requires service pursuant to Rule 7004.

5 **IV. Conclusion**

6 In consequence, AVP must serve its
7 objection to SMG's claim by publication of the
8 objection in the California newspaper most likely to
9 give actual notice to SMG. The court finds that the
10 newspaper most likely to give actual notice is The
11 Los Angeles Times. Accordingly, the court directs
12 AVP to publish its notice in that newspaper, in
13 compliance with California Government Code §
14 6064. In addition, if AVP discovers a qualified
15 recipient for the service of process on SMG before
16 the time has expired for the publication, AVP must
17 mail a copy of the objection to that person.

18 Dated: October 6, 2000

19 
20 Samuel L. Bufford
21 United States Bankruptcy Judge
22
23
24
25
26
27
28

1
2 CERTIFICATE OF MAILING

3 I certify that a true copy of this AMENDED OPINION ON SERVICE OF CLAIM

4 OBJECTION was mailed on OCT - 6 2000 to the parties listed below:

5
6 U.S. Trustee's Office
7 221 North Figueroa St., Ste. 800
8 Los Angeles, CA 90012

9 Ron Bender, Esq.
10 Levene, Neale, Bender & Rankin, L.L.P.
11 1801 Avenue of the Stars, Ste. 1120
12 Los Angeles, CA 90067

13 Thomsen Young, Esq.
14 Pacahulski, Stang, Ziehl & Young
15 10100 Santa Monica Blvd., Ste. 1100
16 Los Angeles, CA 90067

17 AVP
18 Attn: Bill Berger
19 330 Washington Blvd., Ste. 600
20 Marina del Ray, CA 90292
21
22
23

24 DATED: OCT - 6 2000

25 
26 Deputy Clerk
27
28